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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/510,235	01/11/2005	Elie Piana	P25925	6704
7055 7590 05/18/2007 GREENBLUM & BERNSTEIN, P.L.C. 1950 ROLAND CLARKE PLACE RESTON, VA 20191			EXAMINER THANH, QUANG D	
			ART UNIT 3771	PAPER NUMBER
			NOTIFICATION DATE 05/18/2007	DELIVERY MODE ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

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Office Action Summary

Application No.

10/510,235

Applicant(s)

PIANA ET AL.

Examiner

Quang D. Thanh

Art Unit

3771

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 06 May 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 17-37 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 17-29, 31-33, 36-37 is/are rejected.
- 7) ☒ Claim(s) 30, 34 and 35 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 13 October 2004 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|----------------------------------------------------------------------------------------|-------------------------------------------------------------------|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>5/6/05</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

1. This office action is responsive to the preliminary amendment filed on 5/6/05. As directed by the amendment, claims 1-16 have been cancelled and new claims 17-37 have been added. Thus, claims 17-37 are presently pending in this application.

Priority

2. Receipt is acknowledged of papers submitted under 35 U.S.C. 119(a)-(d), which papers have been placed of record in the file.

Drawings

3. The drawings have been received on 10/13/2004 and these drawings have been objected to under 37 CFR 1.84 for the following reasons: lines, numbers and letters are not uniformly thick and well defined; and numbers and reference characters are not plain and legible for all figures.

4. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the " suction chamber comprises a lower edge forming a fixed inlet/outlet" in claim 23 must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure

is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Claim Rejections - 35 USC § 112

5. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

6. Claim 25 is rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim contains subject matter "one spray outlet", which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention.

7. Claim 33 is rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim contains subject matter "said upper body includes at least one outlet, such that said suction chamber is in fluid communication with said outlet of said upper body", which was not described in the

specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention.

8. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

9. Claim 23 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. The term "a lower edge forming a fixed inlet/outlet (?)" is unclear.

10. Claim 26 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. The phrase "one elastic joint (joint of what elements ?) providing suction integrity for said suction chamber" is unclear.

11. Claim 26 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. The phrase "whereby regulating variations of said pressurized fluid flow pressures due to leakages (?) from said vacuum massage device, said massage head movements, and said pressurized fluid sucked into said suction chamber" is unclear as to leakage of what ? and how are the pressurized fluid flow pressures regulated ? and by what structure. Also, "said massage head movements" lacks antecedent basis and is unclear.

12. Claim 37 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. The phrase " A process for a vacuum massage under affusion of a fluid that includes a vacuum massage device" is unclear as to whether this is directed to a vacuum massage device or method of using a vacuum massage device.

Claim Rejections - 35 USC § 102

13. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

14. Claims 17 and 37, as best understood, are rejected under 35 U.S.C. 102(b) as being anticipated by Frajdenrajch (6,090,055). Frajdenrajch discloses a vacuum massage device under affusion of a fluid (sweat or massaging fluid on the skin) comprising: one massage head 1 (fig. 1) including a suction chamber (col. 6, lines 8-14), such that said massage head is operable under affusion; an upper body 8 connected to one contact 22 (fig. 1) providing a suction to said suction chamber (col. 6, lines 63-67); and at least one roller 12 (fig. 1) coupled to said massage head.

Claim Rejections - 35 USC § 103

15. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

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(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

16. Claims 18-29, 31-32 and 36 are rejected under 35 U.S.C. 103(a) as being unpatentable over Pesovic et al. (6,213,964) in view of Frajdenrajch.

17. Re claim 18, Pesovic et al. discloses a massage device (fig. 1) comprising: an upper body 200 (fig. 1) including at least one inlet 214 (fig. 1) for a pressurized fluid; at least one contact 120 (fig. 1) connected to said upper body; at least one massage head 105; and wherein the pressurized fluid is in fluid communication with said upper body, said least one contact, and said at least one massage head, such that said massage head is operable under affusion (fig. 1), except for a suction chamber. However, Frajdenrajch teaches a vacuum massage device comprising a massage head 1 (fig. 1) including a suction chamber (col. 6, lines 8-14); an upper body 8 connected to a contact 22 (fig. 1) providing a suction to said suction chamber (col. 6, lines 63-67) for permitting formation of the fold of skin and rollers for permitting the skin to be simply rolled without being pinched or compressed (col. 4, lines 1-27). Therefore, it would have been obvious to one of ordinary skill in the art at the time of invention was made to modify the device in the Pesovic et al.'s reference, to include a suction chamber, as suggested and taught by Frajdenrajch, for the purpose of providing low pressure sealing of the suction chamber that permits formation of the fold of skin thereby enhancing the overall massaging effect of the device.

18. Re claims 19-20 and 36, Pesovic et al. discloses that the massage head includes a plurality of rollers enabling said massage head to move in all directions;

wherein said plurality of rollers are in a cylindrical shape; wherein said pressurized fluid is water (water jets, see abstract).

19. Re claims 21-23, as best understood, Frajdenrajch teaches the rollers 12/16 are mounted on at least two parallel axles 14/18 (fig. 2), such that at least one roller laterally rubs against an at least one elastic joint 10 providing suction integrity for said suction chamber (fig. 2), wherein said plurality of rollers are a smooth type roller that provides displacement of said massage head (fig. 1); wherein said suction chamber comprises a lower edge 10 made from a sliding material structured for the head to move on skin of a human body (col. 5, lines 1-7)

20. Re claims 24-27, 29 and 31-32, as best understood, Pesovic et al. discloses the massage head includes at least one channel 128 in fluid communication with said at least one contact 120 (fig. 1), such that said at least one channel dispenses said pressurized fluid in said suction chamber and said plurality of rollers; one spray outlet 232 (fig. 1), such that said at least one channel delivers said pressurized fluid to said suction chamber and to said at least one spray outlet thereby applying said pressurized fluid to the skin (fig. 1); wherein said at least one channel is arranged to deliver a liquid ring of said pressurized fluid around said suction chamber on the skin; wherein said upper body 200 and said massage head 105 form at least one single unit (col. 10, lines 38-45); wherein said suction chamber includes at least one groove 128 in fluid communication with at least one hand receptacle 210 connected to said upper body, such that said fluid arrives on said rollers (fig. 1); wherein said at least one hand receptacle includes at least one hand receptacle channel 230, such that said at least

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one hand receptacle channel is in fluid communication with said inlet of said upper body via said at least one contact; wherein at least one connector is in fluid communication with at least one hand receptacle channel and said inlet of said upper body, such that said at least one connector 218 includes a threaded portion, whereby said at least one connector controls an amount of flow of said pressurized fluid into said at least one hand receptacle channel by threading said at least one connector (fig. 1).

21. Re claim 28, with respect to "interchangeable massage head" and "said interchangeable massage head includes a larger or a smaller interchangeable massage", Official notice is taken that it is well known in the art of massager to use interchangeable massage heads with various sizes in order to accommodate different body parts of different users. Therefore, it would have been obvious to one of ordinary skill in the art to include interchangeable massage heads with various sizes in order to accommodate different body parts of different users as needed.

Allowable Subject Matter

22. Claims 30 and 34-35 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Conclusion

23. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Pereira discloses a massaging device. Bosley discloses a vacuum massaging device.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Quang D. Thanh whose telephone number is (571) 272-4982. The examiner can normally be reached on Monday-Thursday & alternate Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Justine Yu can be reached on (571) 272-4835. The Central FAX phone number for the organization where this application or proceeding is assigned is (571) 273-8300 for all communications.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



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